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BOOK REVIEWS

Military Law Under the Uniform Code of Military Justice. By William B. Aycock and Seymour W. Wurfel. Chapel Hill: The University of North Carolina Press, 1955. Pp. 430. \$7.50.

The authors of this 430 page text on military law under the Uniform Code of Military Justice are no strangers to those who have followed the progress of military law in recent years. Professor William B. Aycock, of the law school faculty of the University of North Carolina and a reserve Lieutenant Colonel in the Judge Advocate General's Corps, and Colonel Seymour W. Wurfel, Judge Advocate General's Corps, United States Army, have individually contributed a number of excellent law review articles dealing with various aspects of military law. In *Military Law Under the Uniform Code of Military Justice*, they have combined their considerable talents in this field resulting in a superb contribution to military jurisprudence.

In their joint publication, Professor Aycock and Colonel Wurfel in a clear, concise and scholarly manner discuss, analyze and comment on every important decision rendered by the Court of Military Appeals from its inception on May 31, 1951 to August 31, 1954. Parenthetically, it might be stated that this Court is the highest court in the military hierarchy being composed of three civilian judges and of equal status with the Circuit Court of Appeals in our Federal system. In addition, decisions of Boards of Review, which are the appellate bodies in the offices of The Judge Advocates General of the various Armed Forces, and federal court decisions have been considered whenever pertinent.

With the advent of World War II, followed by the Korean conflict and the present state of international relations, military law, especially that phase thereof pertaining to military justice, has to a great extent lost its specialized nature. Because of the millions of individuals who have been subject to military law at one time or another and the many millions more directly or indirectly affected by it, this field has become one of growing importance to the individual practitioner and to the law school student. In this light, the student and the civilian practitioner as well as the experienced military lawyer will find in *Military Law Under the Uniform Code of Military Justice* a work of great value.

Commencing with a short historical background tracing the origin of the court-martial system, the authors discuss in turn each of the important subjects of military justice paralleling wherever possible the

Manual for Courts-Martial, United States, 1951, which is considered "the Bible" of the military lawyers.

In separate chapters, jurisdiction insofar as it affects the court-martial, the person, the offense and the sentence are effectively dealt with, followed by a critical discussion of military due process and jurisdiction. In the latter chapter and in a later chapter, the subject of which is Prejudicial Error v. Military Due Process, the reader will find an interesting and critical analysis of decisions of the Court of Military Appeals dealing with reversals of courts-martial because of various types of error.

Under the Uniform Code of Military Justice the law officer, known as the law specialist in the Navy and Coast Guard, is the prototype of the civilian judge, and in its decisions the Court of Military Appeals has held this individual to the same, if not stricter, standards expected of a federal district court judge. Recognizing this fact, in the chapter entitled The Law Officer, the authors have analyzed the decisions of the Court of Military Appeals in sufficient detail to set forth what is expected of the law officer in ruling on motions, his relationship with the court-martial, and in the instructional field.

In succeeding chapters procedures and requirements for preferring court-martial charges against an individual, reference of such charges to trial by court-martial, the trial proper, the appellate processes and powers of appellate agencies, punishments, rules of evidence and the punitive articles of the Code, are covered with the same painstaking care and analysis, that characterizes the text as a whole. In the last chapter dealing with Military Habeas Corpus, the history of the writ is traced from its origin to the present, and the jurisdiction of state and federal courts over cases involving persons tried by military courts, commissions and war crimes tribunals is ably considered. The reader will find in this chapter a convenient and valuable collection of significant precedents relating to fundamental precepts of court-martial jurisdiction and military habeas corpus enunciated by federal courts.

Throughout, one is impressed with the readability of the volume. Sufficient facts appear in the text to keep the reader fully informed of the particular point involved in the case under discussion without continuous resort to footnotes. On the other hand, the volume is so well documented that research is facilitated by the utilization of the extensive footnotes. When one considers that the text has approximately 2000 footnotes, the magnitude of the research involved and the assiduous care in preparation is readily apparent. Without reservation the reviewer is of the opinion that *Military Law Under the Uniform Code of Military Justice* is an excellent instructional vehicle for use in law

schools and is most valuable to the civilian practitioner and the military lawyer as a ready reference and as a source book.

In conclusion, the reviewer believes that the following accolade bestowed upon this work by Major General Eugene M. Caffey, The Judge Advocate General of the Army, in his introduction to the volume, is richly deserved:

“. . . the authors have performed a magnificent service to those who labor in the field of rendering justice as between the United States and its occasional wayward uniformed son. They have provided a definitive and scholarly work to serve as a guide line in solving the perplexing issues which will continue to arise, for a long time to come, in the administration of the comparatively new Code.”

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Drafting Wills and Trust Agreements: Dispositive Provisions. By Gilbert T. Stephenson. Boston: Little, Brown and Company, 1955. Pp. 593. \$11.50.

This volume brings to completion a project of a lifetime. Shortly after his graduation from the Harvard Law School Mr. Stephenson entered upon a career in the field of trust business, which he has made notable. His scholarly interests in trusteeship were apparent from the beginning. While still a trust officer he was a frequent contributor to professional journals and a stimulating speaker at trust conferences. He was an early president of the Trust Division of the American Bankers Association. When the Graduate School of Banking was organized in 1935 he was obviously the one to head its Trust Faculty and to become its Director of Trust Research; and in these capacities he continued until his retirement in 1950. During these busy years he traveled widely, studying and counselling with trust institutions throughout the country, speaking frequently at trust gatherings and in the leading law schools, and organizing groups for the exchange of ideas on the better performance of fiduciary functions. No one is so widely or so favorably known in the field of trust business as the author of this book.

During all of this time Mr. Stephenson has been an eager, if not

*The opinions contained herein are those of the reviewer and do not necessarily reflect the views of the Department of the Army or the office of The Judge Advocate General.

avid, collector of effective wills and trust agreements, until the items now run into the thousands. Each has been compared and weighed and judged in the light of all others, and out of this process, and his own rich experience, the two volumes of this work have been prepared.

If "avid" suggests personal benefit it must be rejected in characterizing Mr. Stephenson's collecting propensities, for they have always been exercised for the help of others. The material has been extensively used in teaching, in law-school lectures and in published articles. Now it is comprehensively assembled and organized for the aid of lawyers and trustmen and all others who may be interested in the effective administration and wise disposition of property.

The first volume on *Drafting Wills and Trust Agreements: Administrative Provisions* was reviewed in this *Review* in December, 1953.* It dealt largely with the mechanics of property management in the hands of representatives and trustees. The present volume on *Drafting Wills and Trust Agreements: Dispositive Provisions* is concerned primarily with persons, and with ways in which property may be employed for their good. It is filled throughout with material of human interest. Even a layman who is at all involved with property and family affairs will find this an extremely readable book.

Part I is introductory, and discusses the nature and significance of the dispositive power.

Part II analyzes the devices which are available to one planning the final disposition of his property. One chapter is devoted to Outright Gifts, by devise or bequest, of various types of property, in varying interests, immediately or upon conditions, and to what occurs if persons and properties do not continue in existence to take or be taken. A second chapter treats of Gifts in Trust, the reasons therefor, the nature of the rights acquired, and how they are enjoyed and administered. Throughout, the problems are recognized and discussed and helpful language is suggested for their solution. A final chapter is devoted to Powers of Appointment. Where the device may prove useful, how it can be created and exercised or renounced, and the tax consequences are all suggestively and helpfully considered.

Part III applies the devices which are available to the many situations where they may be needed. This is the heart of the book. In the first chapter Mr. Stephenson reviews and weighs the objectives which are normally sought by one in disposing of his property. This should be of particular help to the layman. One chapter is devoted to the troublesome problem of disposing of personal effects and household goods; and one to funeral arrangements and the disposition of the

* Headley, Book Review, 32 N. C. L. REV. 147 (1953).

body. The remaining seven chapters deal progressively with provisions for individuals, from himself, through various members of his family to his friends and ultimately to charity. The needs of each, under varying circumstances, are considered with frequent provisions showing how those needs can be met. The growing movement for community trusts receives due attention. While the work does not pretend to be an exhaustive treatment of taxation or general law, the discussion is always in the light of these important considerations. Thus the marital deduction statute and the most recent revenue act are frequently cited.

In Part IV the author assembles for treatment four common devices for safeguarding the dispositive plans which the testator-settlor has adopted. A chapter is devoted to each; one to spendthrift trusts; another to discretionary trusts; a third to blanket protection from the Rule Against Perpetuities; and a fourth to ways of dissuading dissatisfied heirs from attempting to upset what has been planned.

Part V may well prove to be of most immediate help to the legal practitioner, for there the author synthesizes into workable plans the numerous suggestions which have been made in the earlier portions. A chapter is devoted to the useful, but legally troublesome, pour-over trust, the device whereby a property owner seeks to bring together the *inter vivos* and testamentary dispositions of his fortune.

A second chapter gives in tabulated form twenty-five plans for disposing of an estate of \$150,000 for a wife and two children, as suggested by students at the Graduate School of Banking majoring in trusts. This is followed by dispositive provisions in trust instruments actually employed in seven widely separated states.

Then follows an illustrative will. It is designed for a supposititious estate which involves most of the major problems that have been raised. Administrative and dispositive provisions are necessarily brought together. But, unlike a form book, the draftsman pauses at every important turn to examine, explain and comment upon the language used.

The practical usefulness of this work is increased by a Table of Contents at the beginning and an index at the end. The Table progresses from a statement of the field to be covered to a check-list at the close; the material between is comprehensive and well organized. The Index makes possible quick reference to the many phases of draftsmanship on which one may want suggestions.

This book is neither a treatise on the law of wills and trusts, nor a book of forms for unthinking use in their preparation. Rather it is a journey through what to many seems a bewildering jungle. Mr. Stephenson leads, but does not command. At difficult turns he pauses

to discuss alternative courses and to explain the reasons for their adoption or rejection. New avenues occasionally appear with changing circumstances, and they are not overlooked. For most situations, however, the successes and failures of those who have gone before illuminate the way. Experience is ever a wise guide.

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